

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1358**

Anthony Scott David Auginaush, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 1, 2023
Affirmed
Wheelock, Judge**

Clearwater County District Court
File No. 15-CR-18-33

Anthony Auginaush, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kathryn Lorsbach, Clearwater County Attorney, Bagley, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Ross, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges the postconviction court’s order denying his second petition for postconviction relief, arguing that the postconviction court erred by failing to properly respond to his request to withdraw his guilty plea. Because the postconviction court correctly construed appellant’s request to be a petition for postconviction relief pursuant to

Minn. Stat. § 590.01, subd. 1 (2022), and appellant's petition for relief is procedurally barred, we affirm.

FACTS

In December 2017, respondent State of Minnesota charged appellant Anthony Scott David Auginaush in juvenile court with one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(g) (2012). The petition alleged incidents of criminal sexual conduct by Auginaush other than the incident for which he was charged but did not include any charges based on those other incidents. Auginaush was 22 years old at the time he was charged, although the charge arose from events alleged to have taken place when he was 17. Auginaush waived his right to a certification hearing and agreed to be prosecuted in district court.

The state and Auginaush entered into a plea agreement in which the state agreed to charge only one count of criminal sexual conduct, notwithstanding allegations that there were additional victims, and recommend a stayed sentence in exchange for Auginaush's guilty plea. The district court held a plea hearing, and it questioned Auginaush as to his understanding and acceptance of the agreement. Auginaush's counsel also questioned him under oath about his signed petition to enter a guilty plea and his understanding of the plea, the agreement, and his rights. Auginaush confirmed that he understood the plea agreement and his rights.

At the sentencing hearing, Auginaush's counsel requested time to confer with Auginaush about possibly withdrawing his guilty plea, and the district court continued the hearing to a later date. At the continued sentencing hearing, Auginaush confirmed that he

was not withdrawing his plea and asked the district court to grant a downward dispositional departure pursuant to his agreement with the state. The district court verified that Auginaush understood that, pursuant to the plea agreement, the state recommended a stay of execution, but the court was not required to follow the recommendation and could instead sentence him to prison. Auginaush affirmed that he understood, and the parties jointly recommended a stayed sentence. The district court found no basis for a sentencing departure and sentenced Auginaush to 144 months in prison.

In August 2018, Auginaush filed a direct appeal, arguing that the district court abused its discretion by failing to grant a downward dispositional departure based on mitigating factors and his particular amenability to probation. This court affirmed the district court's sentencing decision. *State v. Auginaush*, No. A18-1363, 2019 WL 3407225, at *5 (Minn. App. July 29, 2019) (*Auginaush I*), *rev. denied* (Minn. Oct. 15, 2019).

In January 2021, Auginaush filed a petition for postconviction relief, claiming ineffective assistance of counsel based on allegations that his attorney failed to adequately advise him of his right to a certification hearing and his trial rights and failed to argue that his guilty plea should not have been accepted. The postconviction court denied his petition.

Auginaush then filed a request with the postconviction court to withdraw his guilty plea on May 20, 2021, and filed a notice of appeal of the postconviction court's denial of his first petition for postconviction relief on May 26, 2021. This court affirmed the postconviction court's decision to deny Auginaush's January 2021 petition for

postconviction relief. *Auginaush v. State*, No. A21-0690, 2021 WL 5550092, at *7 (Minn. App. Nov. 29, 2021) (*Auginaush II*).

On April 14, 2022, Auginaush filed a letter with the postconviction court requesting that it rule on his previously filed request to withdraw his guilty plea. The state did not file a response, and the postconviction court took the matter under advisement. After considering Auginaush's request, the postconviction court construed it as a petition for postconviction relief and filed an order denying it on the grounds that his May 2021 request to withdraw his plea was procedurally barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976), and that the petition filed on April 14, 2022, was time-barred by Minn. Stat. § 590.01, subd. 4(a)(2) (2022).¹

Auginaush appeals.

DECISION

Minnesota Statutes section 590.01 permits a person convicted of a crime to seek postconviction relief based on a claim that the conviction violated the person's rights under the constitution or laws of the United States or the state. Minn. Stat. § 590.01, subd. 1(1).

¹ We conclude that the postconviction court correctly characterized Auginaush's May 2021 request to withdraw his guilty plea as a second postconviction petition and that the issues he raised in that petition are *Knaffla* barred. The postconviction court referred to the letter filed in April 2022 as a "petition" in its order. Because the April 2022 filing did not raise new issues and only requested that the postconviction court rule on the May 2021 request, we decline to address whether the April 2022 filing was statutorily time barred. *See* Minn. Stat. § 590.01, subd. 4(a) (establishing the time period within which a petitioner may file a postconviction petition). Even so, we note that the May 26, 2021 notice of appeal suspended the postconviction court's authority to make orders affecting the order on appeal, pursuant to Minn. R. Civ. App. P. 108.01, subd. 2. Thus, the postconviction court likely lacked jurisdiction to address Auginaush's May 2021 request to withdraw his guilty plea until judgment had been entered in his appeal of the first postconviction petition.

Appellate courts review the denial of postconviction relief for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). We review legal issues de novo but limit our review of factual issues to whether the evidence in the record is sufficient to sustain the postconviction court’s findings. *Id.* We will not reverse the postconviction court’s decision unless it “exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Hannon v. State*, 957 N.W.2d 425, 432 (Minn. 2021) (quotation omitted).

On appeal, Auginaush asserts that the postconviction court’s response to his request in the form of an order denying a petition for postconviction relief was improper because he claims to have filed a motion for withdrawal of his guilty plea pursuant to Minn. R. Crim. P. 15.01 instead of a petition for postconviction relief under Minn. Stat. § 590.01 (2022).

Auginaush appears to rely on Minn. R. Crim. P. 15.01, subd. 1(6)(n),² which states that before the district court accepts a guilty plea, the judge must question the defendant to ensure the defendant has been counseled and understands the absolute right to withdraw the guilty plea and proceed to trial if the district court does not approve the plea agreement. Here, the district court questioned Auginaush and confirmed his understanding as required by subdivision 1(6)(n), then approved the plea agreement as originally presented. Thus, we conclude that the district court complied with subdivision 1(6)(n)’s requirements.

² In his brief, Auginaush cites “Minn. R. Crim. P. 15.01, subd. 1(N)” for the proposition that he has an “absolute right to withdraw the guilty plea and have a trial.” Because rule 15.01 does not have a subdivision “1(N),” we turn to the context of his argument to discern that Auginaush is referring to subdivision 1(6)(n).

Indeed, Rule 15.01 does not provide a procedural mechanism for withdrawing a guilty plea that is distinct from the postconviction remedy of chapter 590. Rather, Minn. R. Crim. P. 15.05 sets out the authority for plea withdrawal, permitting a defendant to “withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. And the supreme court has interpreted Minn. Stat. § 590.01 to require that “[w]hen a criminal defendant seeks to withdraw a guilty plea under Rule 15.05, after the defendant has been sentenced, the motion to withdraw the plea must be raised in a petition for postconviction relief.” *James v. State*, 699 N.W.2d 723, 727 (Minn. 2005). Therefore, we conclude that the postconviction court did not abuse its discretion by construing Auginaush’s request to withdraw his guilty plea as a petition for postconviction relief and responding accordingly.

Because the postconviction court correctly construed Auginaush’s request to withdraw his plea as a petition for postconviction relief, we further conclude that the postconviction court was correct in determining that Auginaush’s petition is *Knaffla* barred. A petitioner may not request postconviction relief based on “grounds that could have been raised on direct appeal of the conviction or sentence.” Minn. Stat. § 590.01, subd. 1. “Claims that were raised on direct appeal, or were known or should have been known but were not raised on direct appeal, are procedurally barred,” or *Knaffla* barred. *Sontoya v. State*, 829 N.W.2d 602, 604 (Minn. 2013) (citing *Knaffla*, 243 N.W.2d at 741); *see also* Minn. Stat. § 590.01, subd. 1. A claim is not *Knaffla* barred if “(1) the claim is novel; or (2) the interests of fairness and justice warrant relief.” *Sontoya*, 829 N.W.2d at

604. The postconviction court may decline to apply these exceptions if the petitioner fails to argue that they apply. *Erickson v. State*, 725 N.W.2d 532, 535 (Minn. 2007). And a postconviction court’s summary denial of a successive petition for postconviction relief will be upheld if the petition raises claims for relief that are similar in substance to claims raised in the prior postconviction petitions. Minn. Stat. § 590.04, subd. 3 (2022) (also stating that a district court “may summarily deny a petition when the issues raised in it have previously been decided by the court of appeals or the supreme court in the same case”); *Perry v. State*, 595 N.W.2d 197, 200 (Minn. 1999) (citing Minn. Stat. § 590.04, subd. 3 (1998)).

In denying Auginaush’s postconviction-relief petition to withdraw his guilty plea, the postconviction court determined that Auginaush could have argued for plea withdrawal during his direct appeal and did not do so. Our review of the record confirms that Auginaush knew of his claim regarding his guilty plea and could have raised it on direct appeal but did not. *See Auginaush I*, 2019 WL 3407225 (addressing Auginaush’s appeal of the district court’s decision not to depart dispositionally on his sentence).

Further, Auginaush’s claim in his petition to withdraw his guilty plea is substantially based on a claim of ineffective assistance of counsel. Auginaush alleges in his petition that he decided to go forward with the plea because his attorney convinced him that it was his “best chance” and that based on those conversations, he did not believe he would be subject to an executed sentence of 144 months. Auginaush raised ineffective-assistance claims in his first petition for postconviction relief. In affirming the postconviction court’s denial of his first postconviction petition, this court discussed the plea colloquy and Auginaush’s

counsel's performance in consulting with him, concluding Auginaush was unable to prove his counsel's performance fell below an objective standard of reasonableness. *Auginaush II*, 2021 WL 5550092, at *5. Auginaush's claims in this second petition overlap considerably with his claims in the first.

Auginaush does not argue the exceptions that his claim is novel or that the interests of fairness and justice warrant relief. And he does not address the postconviction court's determination that his petition is procedurally barred under *Knaffla*. The record demonstrates that Auginaush's petition to withdraw his guilty plea raised substantively similar claims to those in his first petition for postconviction relief and that the claims were known to him at the time of his direct appeal. Auginaush's petition is therefore *Knaffla* barred, and the postconviction court did not abuse its discretion in denying Auginaush postconviction relief on that basis.

Affirmed.